WP(C) 6218/2005
BEFORE
HON'BLE THE CHIEF JUSTICE MR. J. CHELAMESWAR
HON'BLE MR. JUSTICE D.BISWAS

D.Biswas, J

By this common judgment, WP(C) No. 6218/2005 and WP(C) No. 6219/2005 are being disposed of. Both the writ petitions have been directed against the appointment of Smt. Th. Purnimashi Devi, respondent No.5 to the post of Head Clerk in the office of the District & Sessions Judge, Manipur East. The petitioners are working as Accountant-cum-Nazir under different Judgship in the State of Manipur. They are aggrieved because the private respondent Smt. Th. Purnimashi Devi who was working as U.D.C in the office of the District & Sessions Judge, Manipur East and junior to them in service has been promoted to the post of Head Clerk.

2. We have heard Mr Kh. Binoy and Mr BP Sahu, learned counsel for the petitioners; Mr S. Sarma, learned State counsel and Mr P Bora, learned counsel for the respondent.

3. The impugned order issued by the District Judge, Manipur West on 28.5.2005 shows that the private respondent has been promoted on the recommendation of the DPC. To appreciate the contentions advanced on behalf of the petitioners, it would be expedient to refer to the provisions relevant to the issue at hand in the Manipur Subordinate Civil Courts Ministerial Establishment Rules, 1967, which reads as under:-

5. (1) The strength of the staff of a Judgship shall be such as may be determined by Judicial Commissioner from time to time in the proposition statement of that judgship out of the total strength sanctioned by the Government for the Subordinate Courts of this Territory.

Provided that the appointing authority may from time to time subject to the Orders of the Judicial Commissioner leave unfilled any vacant post without thereby entitling any person to compensation.

(2) The staff shall comprise of a cadre of stenographers and general cadre consisting of one or more of the following categories of posts as may be determined by the Judicial Commissioner from time to time.

(3) A. SELECTION GRADE.
(a) C.O.C., District Judge's Court.
(b) Head Clerk District Judge's Court.
(c) Accountant-cum-Nazir District Judge's Court.

B. UPPER DIVISION CLERK
(a) Bench Clerk, District Judge's Court/ Additional District Judge's Court.
(b) Bench Clerk of the Sub-Judge's Court.
(c) Head Comparing Clerk.
(d) Record Keeper.

C. STENOGRAPHERS
(a) Stenographers, District Judge's Court/ Additional District Judge's Curt/ Sub-Jude's Court/ Additional Sub-Judge's Court.

D. LOWER DIVISION CLERK
(a) Judicial Assistants, District and Sessions Judge’s Court/ Additional District Judge’s Court.

(b) Assistant, Accountant, District Court.

(c) Librarian, District Court.
d) Assistant Record Keeper, District Court.
(e) Readers Munsiffs’ Courts.
(f) Assistant Nazir, District Court.
(g) Petition Receiving Clerk, District Court.
(h) Despatch Clerk, District Court.
(i) Receipt Clerk, District Court.
(j) Copyists, District Court.
(k) Judicial Assistants, Sub-Judges’ and Munsiffs’ Courts. .

4. It would appear from Rule 5 that the staff of a Judgship in the State of Manipur has been divided into four compartments, namely-(a) Selection Grade, (b) Upper Division Clerk, (c) Stenographers, and (d) Lower Division Clerk.

The posts of C.O.C., Head Clerk and Accountant-cum- Nazir are in the Selection Grade and are superior in rank and status to the Upper Division Clerks. Again, the post of C.O.C. stands on a higher pedestal as because the pay scale assigned to the post is higher than that of the Head Clerk and Accountant-cum-Nazir. Therefore, as and when vacancy occurs in the post of Head Clerk and Accountant-cum-Nazir, the same will have to be filled-up by promotion from and amongst the UDCs according to seniority-cum-merit. On the other hand, the post of C.O.C. can be filled up by way of promotion and appointment from and amongst the Head Clerks and the Accountants. There cannot be any dispute with regard to this proposition. The writ petitioners contended that the post of Head Clerk has to be filled-up by promotion from and amongst the Accountants. This argument is not tenable for the reason that the pay scale assigned to Head Clerk and Accountant-cum-Nazir is one and the same. Promotion postulates higher pay with higher responsibility. In the instant case, the pay scale being one and the same, the post of Head Clerk cannot be said to be higher than that of the Accountant-cum-Nazir. Therefore, it is not a promotional post. The posts of Head Clerk as well as Accountants are in the Selection Grade which is above the cadre of UDC. Therefore, the posts of Head Clerk and Accountant will have to be filled-up by promotion from and amongst the UDCs. The Accountant-cum-Nazirs serving in a Judgship may expect posting to the post of Head Clerk by way of transfer, and certainly not by way of promotion since both the posts are in the Selection Grade. The promotion of the private respondent who was working as UDC to the post of Head Clerk, therefore, cannot be flawed. No differential criteria is discernible from the Rules as well as other documents on record to hold that the post of Head Clerk is at a higher pedestal than the post of Accountant-cum-Nazir. Rule 13 of the Manipur Subordinate Civil Courts Ministerial Establishment Rules, 1967 provides that promotion to a higher post shall be confined to Clerks in the Judgship where they are working. Rule 13(4) provides that the post of C.O.C.(Sheristadar), Head Clerk and Accountant-cum-Nazir in the establishment of District Judge are to be treated as selection posts and nobody shall claim these posts as of right by virtue of seniority. Note (1) to sub-Rule (4) of Rule 13 provides for additional requirements for a person for appointment to the posts of C.O.C. and Head Clerk. Nowhere in the Rules anything is stated about filling-up the posts of Head Clerk by the Accountants. An incumbent to a post in the Selection Grade cannot claim appointment to another post in the Selection Grade by way of promotion unless it is shown that the post to which promotion is sought is higher than the other. This is the only conclusion which can be drawn upon interpretation of the Rules of 1967.

5. The learned counsel for the petitioners placed reliance on the decision of the Hon’ble Supreme Court in E.P. Royappa vs- State of Tamil Nadu & Anr, AIR 1974 SC 555; P. Savita & Ors. vs- Union of India & Ors., AIR 1985 SC 1124; and in Federation of All India Customs and Central Excise Stenographers (Recognised) & Ors. vs- Union of India & Ors., AIR 1988 SC 1291. The ratio available in the aforesaid judgments, in our opinion, do not help the petitioners.

6. For reasons above, we find no merit in the writ petitions. Hence, both the writ petitions are dismissed.